The Medico-Legal Aspect of Abdominal Section.

Read in the Section of Medical Jurisprudence at the Forty-first Annual Meeting of the American Medical Association, held in Nashville, Tenn., May, 1890.

"She Thought it was Her Change of Life."

Read by Title in the Section of Obstetrics and Gynecology, at the Forty-first Annual Meeting of the American Medical Association, at Nashville, Tenn., June, 1890.

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THE MEDICO-LEGAL ASPECT OF ABDOMINAL SECTION.

A year ago I had the pleasure of presenting to the Section on Obstetrics and Diseases of Women and Children, American Medical Association, a paper on "Concealed Pregnancy, and its Relation to Abdominal Surgery." In the preparation of that paper considerable time was devoted to the compiling of a table of cases wherein abdominal section revealed an undiagnosticated pregnancy. This table is measurably complete, and journals, by extract and summaries, have given a wide circulation to the paper and the table. While that table was in preparation, from letters and other sources, my attention was called to the medico-legal aspect of abdominal surgery, in its general relations, and to the probable testimony of expert witnesses in the cases where an action for malpractice is brought. For this, and the other reason that two American surgeons have already been compelled to plead to an indictment of manslaughter, it seems to me profitable to join this paper rather as a supplement to the one of last year by considering certain medico-legal points of abdominal surgery. A letter from a very eminent American surgeon in relation to one of these cases, says, "For my part I do not see how the error occurred," and I have numerous other letters stating that we ought never to be unable to

diagnosticate pregnancy, especially after the fourth month. Testimony such as this would have been very dangerous to such as Professor Freund, Karstrom, Wm. Varian, Professor Czerny, Professor Byford and others equally as competent, had they been placed on trial for malpractice.

We all may at any moment be placed upon our defense by clamor of the public press, which seldom, very seldom, gets down on the right side of any medical question. Dr. Mary A. Dixon Jones is a conspicuous example of newspaper persecution, which happily she overwhelmed. Designing attorneys, with prospects of good fees, may urge unwilling people into litigation, or avaricious relatives may, failing in levying blackmail, institute an action. Motives no different from these give rise to nine-tenths of all actions for malpractice.

In case of the death of the patient the surgeon may be proceeded against, criminally, by an indictment for manslaughter, and civilly, by an action for damages. One action criminal, is no bar to another civil, for damages, nor can the result in one prejudice the result in the other. If the surgeon be proceeded against by an indictment, in my own State, New York, the indictment is drawn under the provisions of the Penal Code, Section 195, viz.: "A person who, by an action of negligence or misconduct, in a business or employment in which he is engaged, or by any unlawful negligence or reckless act, occasions the death of a human being, is guilty of manslaughter in the second degree."

In States where no statutory provisions have been enacted, the indictment is drawn at common law. At common law, "If a physician or surgeon or any person assuming to be such, by

his gross negligence, or gross ignorance, or by his rashness or want of proper caution, causes the death of his patient, it is manslaughter." (Field's Medico-Legal Guide.)

As the statutory provision is drawn from the common law and depends for its interpretation on the interpretation of the common law, we can find no clearer demonstration than that of Lord Ellinborough (Rex *vs.* Williamson, 3 C. & P. 635), in his charge to the jury. He says, "To substantiate the charge of manslaughter the defendant must have been guilty of criminal misconduct arising, either from the grossest ignorance or the most criminal intention. One or the other of these is necessary to make him guilty of that criminal negligence and misconduct which was essential to make out a case of manslaughter. It does not appear that there was any want of attention on his part and from the evidence of the witnesses, on his behalf, he possessed some degree of skill." (The defendant in this case had forcibly torn away a prolapsed uterus, following delivery). "I think the defendant could not possibly commit such mistakes in the exercise of his unclouded faculties, and I own that it appears to me if you find the defendant guilty of manslaughter, it will tend to encompass a most important and anxious profession with such dangers as will deter reflecting men from entering into it." (The verdict not guilty was entered in this case). So far as I am able to learn, charges to juries have been uniformly that gross neglect or gross ignorance, or both, must be shown on the part of the prosecution beyond a reasonable doubt before conviction can be had. Then, as has already been shown, the prosecution must stand or fall upon the proof of gross neglience or gross ignorance, one or both, or in other words,

criminal misconduct. Gross ignorance and gross negligence are both questions of fact, and must be passed upon by a jury. In consequence, the standard of care and skill form that, and other facts and conditions, must be a variable one. But they are not questions of fact purely. It is the duty of the court to charge the jury with reference to degrees of care and skill by definition and illustration. It has been maintained that it is impossible to make precise distinctions between negligence and gross negligence. Mr. Justice Bradley (U. S. S. C. Reports,) says, "In deciding the question of negligence where there is any conflicting testimony, and ordinarily where there is not, all the facts and circumstances should be submitted to the jury with instructions to the jury that in deciding whether there was ordinary care or gross negligence, they are to consider the position of the party, his business, his duties and responsibilities, and that the same act which under some circumstances would not show any degree of negligence might under others, show want of ordinary care; and under still other circumstances might show gross negligence, and this should be settled by the jury as a question of fact, and not by the court as a question of law."

Gross ignorance is open to the same objection that gross negligence is, viz.: of being relative. That which under some circumstances would be ordinary skill, in other circumstances would be ignorance, and, in still other circumstances, would be gross ignorance. The very favorable rule of law has been laid down that, "The least amount of skill therefore, with which a fair proportion of the practitioners of a given locality are endowed, is taken as a criterion by which to judge the physician's ability or skill." (Bouvier's Inst.

1004-5.) "The surgeon must adopt the means and apply the skill well settled by the highest lights of his profession. He must possess and practically exercise that degree and amount of skill, knowledge and science which the leading authorities have pronounced as the result of their researches and experience up to the time, or within a reasonable time before the issue or question to be determined is made." (Elwell on Malp., 55.)

Again surgeons residing in the large cities with hospitals and other superior advantages, will be required to possess greater skill than those living in localities remote from such advantages, and there seems to be a concensus of judicial opinion that unless specifically contracted for, the surgeon is only bound to exercise the ordinary care and skill.

By way of illustration let me present a single case the kind of which is not likely to occur again. Surgeon A. is called to a case of abdominal tumor. By examination he finds that the patient is thirty-six years, married twenty years, no children. The tumor has been growing eight months. Patient has never menstruated regularly, often not flowing for five or six months, and now has not menstruated for eight months. She has vomited and been constipated at intervals, has felt no quickening and does not believe herself pregnant. Vaginal examination reveals a cervix high up, somewhat enlarged, os uteri not patulous or particularly enlarged, unable to make out body of uterus. Upon abdominal examination a distinctly fluctuating tumor is made out located centrally and evidently from the physical signs contains fluid within a cyst. The diagnosis of ovarian cyst is made, and an operation proceeded with. Upon opening the abdomen the tumor appears. The walls are thin and not of

unusual appearance ; the trocar is introduced and six quarts of fluid withdrawn, after which the operator finds he has tapped a pregnant uterus. He completes the operation by a Cæsarian section, and in five days the woman dies of septicæmia. Surgeon A. is indicted for manslaughter, the indictment averring that he through gross ignorance, by gross negligence, by rashness or want of proper caution, caused the death of his patient. The indictment is drawn under the provisions of the common law of the State in which he resides. Surgeon A. pleads not guilty, and the trial is proceeded with. The prosecution prove the facts as have been heretofore stated, and call expert witnesses to prove gross ignorance, gross negligence, want of caution or rashness. The only way they can demonstrate the facts so essential for conviction, is by expert testimony. The chief question involved and presented with earnestness : Was there sufficient symptoms of pregnacy present to arouse the suspicion of pregnancy, and did the defendant exercise sufficient care and skill in making his diagnosis ? The opinion of the witnesses for the prosecution is that sufficient symptoms, amenorrhœa, vomiting and the presence of a tumor was sufficient evidence of pregnancy to require a most searching examination before pregnancy could be excluded, and that the defendant was negligent and unskilled in his examination. It is shown that he did not examine the breasts for the changes that occur in pregnancy, that he did not inspect the vagina for the change in color (wine leaf), he did not seek to illicit ballottement, that he did not lay sufficient stress upon these and other symptoms as to the probabilities of pregnancy, and that a proper explanation of the possibilities of her condition was not made to the patient and to her

friends, previous to the operation. That no suggestion was made by the operator as to the necessity of exploratory incision, if at all in doubt as to the diagnosis.

The defendant showed by competent witnesses that he had exercised the average care and skill in examining the patient, that he had not acted with undue haste or rashness, and that he was honest in his belief that the case was one of ovarian cyst. He admitted having committed an error of judgment, which he believed was liable to occur in the hands of surgeons of good reputation under existing circumstances. The case was ably tried and the jury brought in a verdict of guilty. It was carried to the next court, and there the court on argument overruled the verdict, presenting some very strong points on the subject, part of the line of argument being that the surgeon was shown to have been a man of great experience, of large practice, a man who stood extremely well with his professional brethren, who had for years maintained a high reputation, very far above the average. That the verdict rendered by the jury was not for the public good and that the conviction ought not to stand. No further attempt was made by the prosecution.

Another case which illustrates ninety-nine per cent. of the cases of concealed pregnancy, where an operation has been done, is surely not so easy of diagnosis, being that of Surgeon B., having a patient aged fifty, married many years, always sterile. Fibroid had existed for twenty years or more, pregnancy not suspected. A hysterectomy was done for the removal of the fibroid, and when the uterus was opened, to his own and everybody's surprise, the surgeon brought out a buxom fœtus which seemed also very much surprised, for it immediately began to cry. It

proved to be at least eight months old and all right. There was also a very large fibroid which was very vascular. Unfortunately the patient died soon after. Surgeon B. was tried for manslaughter and acquitted.

Perhaps one of the most unpleasant cases of malignant persecution is the case of Surgeon C., where after careful explanation to the patient of the physiological change that would take place, and her condition after the operation, it was finally decided to remove the uterine appendages. The operation was done, the patient recovered, and some months afterward a suit was brought against Surgeon C. for wilful mutilation. It was shown that all proper explanation had been made to the patient and to her friends, that the operation had been skillfully done, and the patient made a good and speedy recovery, and yet the jury disagreed. A second trial took place some time after and the surgeon was acquitted, yet he had been to great expense in his defense and had lost much valuable time, but the laws of his State afforded him no redress whatever. I might cite other cases, but can say earnestly, and for the comfort of the honest and well-meaning surgeon, that I have not been able to find a case where conviction has occurred and the higher courts have sustained the verdict. A careful study of the rulings of the courts and charges made by judges to juries in such cases, brings up prominently the fact that the law recognizes no one school of medicine. The doctor must practice the necessary skill in the diagnosis of his cases and he must exercise the average degree of ability in the doing of the operation, and that he is not supposed to do more than is required of the person possessing an average amount of skill. Another point that seems to have been pre-

sented with considerable force by some of the rulings, is contributory negligence on the part of plaintiffs. In several operations it was shown that the plaintiff wilfully withheld from the surgeon certain symptoms, and that she purposely misled him by making statements of conditions that did not really exist. This would have been the case had Drs. Prince and Varian's cases been presented for trial. Beyond a doubt on these points alone plaintiffs would have been ruled out of court.

Referring once more to the case of Dr. Jones, which has been so recently before the profession, she says in answer to a letter of mine that "She is glad to know that the subject of the medico-legal aspect of abdominal section is to come up for discussion at this meeting," and states as follows: "There is a necessity to look into these subjects. Under the existing laws of the State of New York, a surgeon has no protection. If, in his efforts to relieve the sick and suffering, he decides to do abdominal section, or indeed to perform any surgical operation, and if, notwithstanding his best directed efforts, the patient should die, he is liable to, or may have a suit for malpractice or an indictment for manslaughter in the second degree. If the patient lives and does well there may still be a suit for malpractice. The surgeon may spend his strength, his time and give his best efforts to relieve the suffering poor, yet under the law, and by the law, these same persons, for whom he has labored, may turn and rend him and use every effort for his destruction, personal and professional. Malice at any time may so construe the law that at any unexpected moment the surgeon or physician may find himself in the most serious and unpleasant difficulties. Thus it is simply dangerous to practice

medicine and surgery in the State of New York. A distinguished lawyer said to me the other day, that however well prepared he might be, yet he would not, as the law at present stands, *dare* to practice medicine, and he thought he had about as much courage as most people.

Section 200 of the Penal Code, says:

> *Liability of Physicians.*—A physician or surgeon who being in a state of intoxication administers a poisonous drug or does any other act as a physician or surgeon to another person which produces the death of the latter is guilty of manslaughter in the second degree.

But according to Judge Bartlett's ruling, "Physicians are also liable under Section 193 of the Penal Code in connection with the proceeding provisions." Subdivision 3 of Section 193 says: "By any act of procurement or culpable negligence." This comprehends a great deal and can be made to mean anything. A physician or surgeon though he may have the best preparation, yet by any act of procurement as administration of medicine or surgical operation, if the patient dies he may be found guilty of culpable negligence. There will always be found physicians who would have used different procedures, or advised another course as preferable.

If a surgeon for the welfare of a patient deems it best for him or her to perform abdominal section and death ensues, malice can, under subdivision 3 of Section 193, have him indicted for manslaughter in the second degree.

If a surgeon neglects to perform abdominal section, when in the estimation of another it should have been performed, and the patient dies in consequence of the pelvic conditions, that surgeon under Subdivision 3 of Section 193, of the Penal Code, can be found guilty of culpable neg-

lect, and indicted for manslaughter in the second degree.

Judge Bartlett says further: "If a person assumes a certain amount of skill, and does not develop that amount of skill, his act is guilty of culpable negligence." How largely malice or blackmail may misjudge this skill and use the law for direct persecution, or as the *New York Medical Journal* puts it, for "Roasting Physicians."

Notwithstanding the strong points she presents, I am of the opinion that the courts have ruled in justice to all concerned in these cases. It is necessary that the public have proper protection, that while we must advance in our profession only by experience and accumulated skill in the doing of untried operations, yet in their performance great caution and the careful study of cases becomes a necessity. It will be observed that, while it has been a great hardship and required much resolution for the surgeons who have been attacked to defend themselves, yet they have in the end triumphed.

What I would like to see as the result of this discussion is, the betterment of our laws in this, that surgeons may have better protection in the recovery for loss of time, for expenses they have been put to, when it is proven that the case was urged by some disreputable lawyer, or by those personally malignant, within or without the profession.

My conclusions would then be:

1. That we should exercise the greatest care in the examination of our cases of doubtful diagnosis.

2. That when in doubt we should lay great stress upon the necessity of an exploratory incision,

and make a very proper explanation of what this means to the patient and friends.

3. That in the cases thus far brought to trial, we have reason to believe that the judges in their rulings have treated our profession with great fairness, the strong points being, that the public good is not subserved by undue and wilful persecution of the surgeon who has shown the proper amount of intelligence in his profession.

4. That we should seek still to have the law so made in our favor as to eliminate the cases of wilful prosecution.

5. That in the careful study of these cases we have presented the lamentable condition of expert testimony. Men absolutely ignorant upon the subject, men who have never done an operation of any merit in surgery, being allowed to come upon the witness stand and testify as experts.

"SHE THOUGHT IT WAS HER CHANGE OF LIFE."

REPORTING CASES OF UTERINE POLYPI, UTERINE CANCER, INVERSION OF UTERUS AND SUB-PERITONEAL FIBROID.

The object of this paper is to concentrate upon certain cases that occur in our consultation practice, and in the practice of the overworked general practitioner, a closer and more positive examination for the purpose of a correct diagnosis. I will proceed at once to the report of a case that will help to illustrate what I have in mind.

Miss M., æt. 47, a well-to-do maiden lady residing in a small country town, had been in good health, regular in her menstruation up to the age of 44, when she began to flow more excessively at her menstrual periods, and soon thereafter developed a condition of both menorrhagia and metrorrhagia. After this condition had lasted for a year, and when she was quite anæmic, somewhat exhausted and losing in flesh, she consulted her family physician, Dr. B., who treated her for some time with tonics, rest and diet, with some little benefit, and yet not much improvement as to the excessive flowing. He suggested making a careful examination as to her condition, but this she positively refused to have done, saying that "she believed it to be only her change of life." He treated her for another year, at the end of which time she was confined to her bed, and yet refused to have any local treatment. When she

had suffered for nearly three years, and in a condition when there was much œdema of the extremities, her lips colorless and a profound state of anæmia present, at the earnest solicitation of the members of her family, she finally yielded, and the doctor was permitted to make an examination which confirmed his previous suspicions of a uterine fibroid. It presented in the form of a simple polypus projecting from the external os. Her condition was made known to her and an immediate operation urged. I was sent for on October 10, 1887, and found her in such an exceedingly feeble condition that I really feared she might die from the additional slight shock of the operation. She, however, was very willing to have done what seemed to be best, was now entirely passive, knowing that she could live only a short time if not helped in some way. I found a large polypus filling the cavity of the vagina, and attached by a moderately-sized pedicle to the internal os. Around it I was able to pass the chain of the écraseur, and to remove it without any great trouble, not giving the patient an anæsthetic, as I feared she would be unable to endure it. Cavity of the uterus was curetted thoroughly, washed out with a weak solution of bichloride and packed with iodoform gauze. This was removed at the end of forty-eight hours and afterwards vaginal douches made use of containing boracic acid in solution. This patient ultimately made a complete recovery, although her convalescence was somewhat slow in consequence of her exceedingly weak and exhausted condition.

I present this as a case familiar to many of us, illustrating a class of cases where procrastination on the part of the practitioner, absolute indifference and stubbornness on the part of the patient often costs the latter her life. Women seem to

have in their mind the idea that they must expect all sorts of conditions to present at the time of the menopause, and are too negligent, too frequently, in having their cases properly looked into.

Belonging to another class of cases, which are far more sad, are the following:

Mrs. B., æt. 33, married, mother of three children, has always been in good health, family history good, youngest child 3 years of age, whom she nursed and weaned at the age of 14 months. Menstruated regularly after that until six months previous to her admission into the Albany Hospital, September, 1886. During that time her flowing had continued almost constantly. She suffered little pain, but was much weakened, had emaciated somewhat, and continued attending to her household duties, refusing all local treatment. Her family physician finally told her that he would have nothing more to do with her case, and that she must go to the hospital, where she came under my care. On making an examination, I found an epithelioma that embraced the entire cervix, extending to the lateral walls of the vagina, to the under surface of the neck of the bladder, and extending up along the lower portion of the urethra. It was absolutely impossible to do anything for her in the way of treatment or operation, and when she was informed of her true condition the sadness of the scene is but too well known to many of us. This illustrates a class of cases by far too numerous as they present in hospital practice, and yet notwithstanding the time of life at which this patient complained, she too insisted that "she supposed it was her change of life, and that she would soon be all right."

Belonging to another class of cases are some such remarkable ones as I here report, where, having passed the menopause in a normal manner,

the patient afterwards presents this condition of flowing and exhaustion, but still entertains the idea that it is simply a return of the menstrual flow, and which indicates another phase or condition of change, and which the following cases illustrate somewhat:

Mrs. Gory, æt. 65, married, native of Canada, mother of seven children, a strong and healthy woman all her life, passed her menopause without any unusual symptoms at the age of 49. At the end of three years, during which time she had been in good health, she began, as she supposed, her menstruation again. Did not pay very much attention to it at first, it came on at irregular intervals and continued so, at times flowing very severely. During March and April, 1889, she visited Chicago, when, flowing very severely, and being under the care of the physician of the family where she was stopping, after examination she was told by him that she had a uterine polypus, and that he would operate upon her by dilating the womb and removing it. She did not like to be operated upon away from home, was fearful of the effect of an anæsthetic, and returned to her family. Her flowing continued at intervals with more than usual severity, accompanied with very much pain at times. She described her pain as being of an expulsive character, not unlike that of childbearing, as she stated. The pain during July and August was unusually severe, and she realized that something was projecting from the vaginal orifice. About August 15, 1889, this became very prominent and somewhat offensive. She had been treated by her local physician, who failed to make any diagnosis of the case. On August 23, Dr. Turner, of Crown Point, N. Y., was called to see her and was somewhat startled on entering the room, to notice the very marked

odor of gangrene that presented. On examination he found a mass protruding from the vulva, the exact character of which he was unable to diagnosticate. I was telegraphed for, but did not see her until August 26, 1889. I then found the mass protruding as seen in the accompanying specimen. After a thorough and careful examination, I reached the conclusion that she had been suffering from uterine polypus, which had gradually extruded itself from the cavity, bringing down the fundus of the uterus, and causing inversion of the same. I could feel the lips of the external os well up in the vagina. Taking all things into consideration, her age, and the nasty gangrenous condition of the presenting mass, I concluded that it was not wise to dissect off the polypus, and reinvert or return the uterus, but to throw around that portion of the fundus that could be easily reached, the chain of the écraseur, and remove the mass in that manner. She bore the operation without taking an anæsthetic, the hæmorrhage was not at all severe, the parts were thoroughly douched with a bichloride solution and the cavity of the vagina packed with strips of iodoform gauze. These were removed at the end of the second day, and afterward the vaginal douche of boracic acid solution was continued daily. The specimen, as you will observe, contains the right horn of the uterus and Fallopian tube, the écraseur having reached well above the sloughing mass. She made a good recovery, and is now in excellent health.

The next is a case quite as remarkable in many respects.

Mrs. B., æt. 72, married, mother of three children, her husband a physician, but who had been in a very sad condition of nervous prostration for a period of ten or fifteen years. Mrs. B. had al-

ways enjoyed good health, but at the time of her menopause flowed very severely and irregularly. Supposed that she had ceased to flow at the age of 53, and was in fair health for a few years, but feeling some distress later on consulted the late Dr. Goldsmith, of Rutland, Vt., who told her that "she had a falling of the womb," and fitted her with a glass pessary which she wore without removing for fifteen years. She could then retain it no longer and suffered much for the following year. Later she consulted another physician and an attempt was made to have her wear, first a Babcock external supporter with stem pessary, and later a MacIntosh, all of which were somewhat useless. She suffered a right hemiplegia two years ago, when 70, from which she made a good recovery. Six months ago she noticed, as she supposed, an entire prolapse of the uterus which she could press back with much difficulty, and which she continued to do until about two months ago, when she was unable to do it. It now remained out, she was confined to her bed, gradually growing worse, but her husband not in a condition of mind to recognize the serious state of her health. Her son, a very competent physician, she did not consult, although he saw her daily until about January 28, 1890, when, noticing her condition, the odor of the room, etc., he made careful inquiry of his sister, and then for the first time, learned of the serious condition she was in. He immediately sent for one of his neighboring physicians, who made an examination, but was unable to state positively what he believed to be the real trouble. February 1, 1890, the doctor called at my office, desiring me to see his mother at once. I did so the following day, and found a sloughing fibroid protruding from the vulva, presentingthe most offensive odor possible. The

room had been kept thoroughly ventilated, but the odor was almost unbearable, and the patient seemed much distressed and in a very anxious condition of mind. She stated that she supposed for a long time that her flow had returned, and that she did not think there could be anything seriously wrong until the mass protruded from the vulva. The fibroid had its attachment to the anterior wall of the uterus, and very curiously rested between the cervix and posterior wall of the bladder. By passing the catheter into the latter viscus I obtained a very correct idea of the surroundings and concluded to remove it with the chain écraseur, which I did with little trouble. After removal the uterus returned kindly to its position. She made an uninterrupted recovery and is again able to care for her invalid husband.

The point that I wish to present is this, that these cases are to be found all over the country, and that in some way, and in some manner we should indicate to our patients the importance of their yielding to a more prompt examination, when such histories present as are here given. Our young women should be taught in our schools, academies and colleges more on the subject of menstruation. They should know more about their reproductive organs from chaste, moral and intelligent teachers. Mothers should know more of the functions of their own individual organs, and learn to teach their daughters.

Finally, the profession should exercise more care in impressing upon young wives and mothers the knowledge that in so many cases they so sadly need, and not assume the care of patients who are so unwilling to have the necessary examination made.